WCB – Alberta

Transportation of Injured Workers - Discussion Paper

November 22, 2002

WCB Workers' Compensation Board Alberta

Introduction

Penalties are under review at the Workers Compensation Board – Alberta (WCB). With the enactment of Bill 26, the authority to levy penalties has been brought into today's economic reality. Under old legislation, the maximum fine the WCB could levy was $500 for each day or part of a day on which the contraventions occurred. With changes due to Bill 26, the maximum fine is now $25,000 for each contravention or for each day or part of a day on which the contravention occurs and continues. See Appendix A for section 152.1 of the Worker's Compensation Act (Act).

Over the last decade, our use of financial penalties has been limited. Our preferred approach is to work with employers to demonstrate business value and achieve voluntary compliance. Unfortunately, there are a group of employers who do not respond to this approach and penalties are a means to change employer behavior and encourage greater accountability of employer responsibilities.

Sharing our implementation plan for our new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. This discussion paper puts forth our proposed penalty structure for failure to provide transportation to injured workers and provides opportunity for feedback.

Transportation of Injured Workers

Section 87 of the Act requires that employers provide transportation to injured workers to a hospital or other treating agency as appropriate (see Appendix A for detailed section of the Act). If an employer fails to provide transportation or fails to pay the cost of transportation, the WCB may provide the transportation and pay the cost. The WCB is billed and then charges back the employer's account (i.e. for the ambulance fee). Changes to the Act mean that in addition to recovery of costs, the WCB can also penalize employers for failure to meet their obligations.

Most employers are aware of their responsibility to provide transportation to injured workers and do so without question. It is in their best interests to look after their workers. The WCB currently has various means to educate employers of their responsibilities. They include:

- Worker Handbook – page 10 describes the employer's responsibilities to injured workers – Available on-line on the WCB website and also mailed to injured workers
- Employer Fact Sheet titled "*Your responsibilities when an accident occurs*" – Available to employers by request and on-line on the WCB website

- Publication titled "*Work-related injuries and the WCB – What You Need to Know*" – informs employers about their responsibilities – Available to employers by request and on-line on the WCB website

Employers who do not provide ambulance transportation are often unaware of their responsibility. Investigation shows that there were only 20 incidents in 2001 and 6 incidents in 2002 (year-to-date November 1, 2002). This is minimal when considering that there are approximately 146,000 injuries reported annually (2001 figure).

Given that the fee recovery process is time-consuming and administrative, we suggest levying a penalty for those employers who consistently neglect their responsibility to encourage direct payment of ambulance expenses upfront.

Situations exist where the worker refuses transportation and drives himself or herself to the doctor, especially when injuries are not severe. This approach is not encouraged yet we recognize the difficulty from the employer's standpoint. In these situations, the worker incurs minor expenses for mileage and parking.

Details of Penalty Program

Due to the low incident rate for this contravention, we recommend a more aggressive education approach as a first step. The following are some suggestions:

- A stronger focus on informing employers of this responsibility and potential penalties in the Employer Handbook and other publications
- More emphasis on education employers in WCB seminars and workshops
- Direct mailout of publication "*Work-related injuries and the WCB – What You Need to Know*" to employers who are identified as "first offenders" along with a warning letter

For those employers who consistently neglect their responsibility, we suggest levying a moderate penalty to motivate a change in behaviour. The penalty amount should be no less than $100 per incident and will vary on a case-by-case basis depending on the amount of effort required to achieve recovery of the ambulance fee. This penalty would be billed on the employer's monthly statement along with the recovery of the ambulance fee. The monthly statement will detail specific information regarding the penalty levied, i.e. claim number, amount of fine, etc.

As with other decisions made at the WCB, employers will have an opportunity to request a review of any penalties levied on their accounts. They would follow the normal dispute resolution process with initial contact to a supervisor or manager followed by review at the Assessment Review Committee. The final level of appeal is the Appeals Commission.

Roll-out Strategy

Communication regarding the new penalty program would focus on informing employers, workers and WCB staff. Safety/trade associations and government will also be advised. The primary vehicles for communication may include:

- Stakeholder workshops
- Training sessions for staff
- WCB seminars and workshops
- Direct communication to employers by field staff (such as Claims Auditors and Account Managers)
- WCB website and updates to publications and fact sheets
- Articles in "Insight" publication

Although "first offenders" will not be penalized, general communication efforts will help them become aware of their requirements and the financial consequences for continuing to neglect their responsibilities. The advantage is that employers will have an opportunity to identify inefficiencies and adjust their behaviours prior to incurring penalties.

While general communication of Act changes is already occurring, details of the penalty program will commence in late 2002 and implementation is planned for early 2003.

Penalty Escalation

Past experience has shown that this contravention is infrequent and there is no indication that there are "repeat offenders". As such, the combination of an education process and penalty program should be effective in motivating a change in behaviour. For all employers, this penalty is preventable and within their means to control.

If specific employers consistently refuse to pay for transportation of injured workers, the program could add a provision for penalty escalation. While in practice escalation does not seem likely, this approach is consistent with respect to how we deal with "repeat offenders". Proposal for escalation may include raising the penalty amount per incident. To establish how we will build on the basic penalty program, we will gather input from stakeholders in late 2003 or early 2004.

Stakeholder Feedback

Sharing our plans for the new penalty structure and ensuring our stakeholders have the opportunity for review and feedback is important to us. Information on the general administrative penalty program has already been posted on our website to initiate the process. A stakeholder session introducing the general topic of penalties was also

conducted on November 6, 2002. Two additional workshops, one in Edmonton and one in Calgary, are planned for early December. The focus of the workshops will be to present the WCB model for a penalty program and gather feedback from stakeholders. Once stakeholder views have been considered, implementation of the program will commence.

Next Steps

- Collection of stakeholder feedback – December 2002
- WCB approval of penalty program – January 2003
- Communication of penalty program – First quarter 2003
- Implementation of penalty program – First quarter 2003

Appendix A – Sections of Workers' Compensation Act (Bill 26 changes effective January 1, 2003)

Section 152.1:

Administrative penalty
152.1(1) Where the Board is of the opinion that a person has contravened section 19, 33(1), 87, 103, 105, 106, 108, 109, 110, 138, 139, 140, 140.1, 145, 147(3) or 151.1, the Board may by notice in writing given to that person require that person to pay to the Board within the time specified in the notice an administrative penalty in respect of each contravention in the amount set out in the notice.

(2) A person who contravenes a provision referred to in subsection (1) is liable for the administrative penalty for each day or part of a day on which the contravention occurs and continues.

(3) An administrative penalty may not exceed $25 000
(a) for each contravention, or
(b) for each day or part of a day on which the contravention occurs and continues,
as the case may be.

(4) A notice of administrative penalty may not be issued more than 2 years after the later of
(a) the date on which the contravention to which the notice relates occurred, and
(b) the date on which evidence of the contravention first came to the notice of the Board.

Section 87

Transportation of injured workers
87(1) Where a worker suffers an accident and is in need of medical aid, the worker's employer shall, if the worker is in need of transportation, furnish at the employer's expense immediate transportation for the worker to a hospital or other treating agency, to a physician or to any other place that is appropriate for the treatment of the worker's condition.

(2) If a worker refuses an employer's offer of transportation under subsection (1) and the Board is satisfied that the worker's refusal has prolonged or will prolong the recovery period, the Board may relieve the employer's accident experience record of the additional costs resulting from the refusal.

(3) If an employer

(a) fails to provide transportation to the appropriate place under subsection (1), or

(b) fails to pay the cost of transportation under subsection (1),

the Board may provide the transportation and pay the cost of it and the employer is liable to the Board for the amount so paid.